

# **HIPAA Privacy Rule Checklists Section 164.514 – Other Uses and Disclosures**

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## HIPAA Privacy Rule Checklists Section 164.514 – Other Uses and Disclosures

### I. De-Identification of Protected Health Information.

A covered entity may determine that health information is not individually identifiable – *i.e., it does not identify an individual, and there is no reasonable basis to believe that the information can be used to identify an individual* – if *either* of the following provisions is satisfied:

- a. ☐ A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable:
  - ☐ Applying such principles and methods, determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information; *and*
  - ☐ Documents the methods and results of the analysis that justify such determination; *or*
- b. ☐ The covered entity has no actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information, **and** the following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:
  - ☐ Names;
  - ☐ All geographic subdivisions smaller than a State, except for the initial three digits of a zip code **if**, according to Census data, (1) the geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; *and* (2) the initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.
  - ☐ All elements of dates (except year) directly related to an individual (*e.g.*, birth date, admission date, discharge date, individual ages over 89);
  - ☐ Telephone numbers;
  - ☐ Fax numbers;
  - ☐ Electronic mail addresses;
  - ☐ Social security numbers;
  - ☐ Medical record numbers;
  - ☐ Health plan beneficiary numbers;
  - ☐ Account numbers;
  - ☐ Certificate/license numbers;
  - ☐ Vehicle identifiers (*e.g.*, license plate numbers) and serial numbers;
  - ☐ Device identifiers and serial numbers;
  - ☐ Web URLs;
  - ☐ IP address numbers;

- \_\_\_\_\_ Biometric identifiers, including finger and voice prints;
- \_\_\_\_\_ Full face photographic images and any comparable images; *and*
- \_\_\_\_\_ Any other unique identifying number, characteristic, or code

## II. **Re-Identification**

A covered entity may assign a code (or other means of record information) to allow de-identified information to be re-identified by the covered entity, if the following provisions are satisfied:

- a. \_\_\_\_\_ The code is not derived from or related to information about the individual, and is not otherwise capable of being translated so as to identify the individual; *and*
- b. \_\_\_\_\_ The covered entity does not use or disclose the code for any other purpose, and does not disclose the mechanism for re-identification.

## III. **“Minimum Necessary” Use or Disclosure**

A covered entity must reasonably ensure that the requirements relating to the use or disclosure of the minimum necessary protected health information are met, and must comply with the following:

- a. \_\_\_\_\_ A covered entity must identify (and make reasonable efforts to limit access consistent with these provisions):
  - \_\_\_\_\_ Those persons or classes of persons in its workforce who need access to protected health information to carry out their duties; *and*
  - \_\_\_\_\_ For each person or class of persons, the category of protected health information to which access is needed and any applicable conditions upon access.
- b. \_\_\_\_\_ If the disclosure is a type made on a routine and recurring basis, a covered entity must implement policies and procedures that limit the protected health information disclosed to the amount reasonably necessary to achieve the purpose of the disclosure.
- c. \_\_\_\_\_ If the disclosure is not a type made on a routine and recurring basis, a covered entity must comply with the following provisions:
  - \_\_\_\_\_ Develop criteria designed to limit the protected health information disclosed to that information reasonably necessary to accomplish the purpose for which disclosure is sought; *and*
  - \_\_\_\_\_ Review requests for disclosure on an individual basis in accordance with such criteria.
- d. \_\_\_\_\_ A covered entity may *reasonably* rely on a requested disclosure as the minimum necessary for the state purpose when:
  - \_\_\_\_\_ Making disclosures to public officials that are permitted under the public policy rationales, if the public official represents that the information requested is the minimum necessary for the stated purpose(s);
  - \_\_\_\_\_ The information is requested by another covered entity;
  - \_\_\_\_\_ The information is requested by a professional who is a member of its workforce or is a business associate of the covered entity for the purpose of providing professional services to the covered entity, if the professional represents that the information requested is the minimum necessary for the stated purpose; *or*

\_\_\_\_\_ Documentation or representations that comply with the applicable provisions for using and disclosing protected health information for research purposes have been provided by a person requesting the information for such purposes.

- e. \_\_\_\_\_ A covered entity may not use or disclose an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use or disclosure.

#### IV. **“Minimum Necessary” Request**

A covered entity must make the minimum necessary requests for protected health information, and must comply with the following:

- a. \_\_\_\_\_ A covered entity must limit any request for protected health information from other covered entities to that which is reasonably necessary to accomplish the purpose for which the request is made.
- b. \_\_\_\_\_ If the request is made on a routine and recurring basis, a covered entity must implement policies and procedures that limit the protected health information requested to the amount reasonably necessary to accomplish the purpose for which the request is made.
- c. \_\_\_\_\_ If the request is not a type made on a routine and recurring basis, a covered entity must review the request on an individual basis to determine that the protected health information sought is limited to the information reasonably necessary to accomplish the purpose for which the request is made.
- d. \_\_\_\_\_ A covered entity may not request an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the request.

#### V. **Uses and Disclosures for Other Purposes**

- a. **Marketing Purposes.** A covered entity may use or disclose protected health information for marketing purposes without a valid authorization ***only*** if it satisfies the following requirements:

\_\_\_\_\_ The covered entity uses protected health information to make a marketing communication, or discloses protected health information for purposes of marketing communications to a business associate that assists the covered entity with such communications, to an individual(s) that:

\_\_\_\_\_ Occurs in a face-to-face encounter with the individual;

\_\_\_\_\_ Concerns products or services of nominal value; *or*

\_\_\_\_\_ Concerns the health-related products and services of the covered entity or of a third party and the communication meets the conditions listed below.

\_\_\_\_\_ The communication:

\_\_\_\_\_ Identifies the covered entity as the party making the communication;

\_\_\_\_\_ If the covered entity has received or will receive (in)direct remuneration for making the communication, prominently states that fact; *and*

\_\_\_\_\_ Except when the communication is contained in a newsletter or similar type of general communication device that the covered entity distributes to a broad cross-section of patients or other broad groups of individuals,

contains instructions describing how the individual may opt out of receiving future such communications.

\_\_\_\_\_ The covered entity makes reasonable efforts to ensure that individuals who decide to opt out of receiving future marketing communications are not sent such communications; *and*

\_\_\_\_\_ **If** the covered entity uses or discloses protected health information to target the communication to individuals based on their health status or condition, *each* of the following conditions must be satisfied:

\_\_\_\_\_ The covered entity makes a determination prior to making the communication that the product or service being marketed may be beneficial to the health of the type or class of individual targeted ; *and*

\_\_\_\_\_ The communication must explain why the individual has been targeted and how the product or service relates to the health of the individual.

b. **Fundraising Purposes.** A covered entity may use or disclose certain protected health information for fundraising purposes without a valid authorization **only** if it satisfies the following requirements:

\_\_\_\_\_ The covered entity uses or discloses the following information:

\_\_\_\_\_ Demographic information relating to an individual; *and*

\_\_\_\_\_ Dates of health care provided to an individual.

\_\_\_\_\_ **If** the covered entity *discloses* such information, it discloses the information to:

\_\_\_\_\_ A business associate; *or*

\_\_\_\_\_ An institutionally related foundation.

\_\_\_\_\_ The covered entity uses or discloses such information for the purpose of raising funds for its own benefit;

\_\_\_\_\_ The covered entity's notice includes a statement that the covered entity may contact the individual to raise funds for the covered entity;

\_\_\_\_\_ The covered entity includes in any fundraising materials it sends to an individual a description of how the individual may opt out of receiving any further fundraising communications; *and*

\_\_\_\_\_ The covered entity makes reasonable efforts to ensure that individuals who decide to opt out of receiving future fundraising communications are not sent such communications.

c. **Underwriting Purposes.** A health plan may not use or disclose protected health information received for the purpose of underwriting, premium rating, or other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and if such health insurance or health benefits are not placed with the health plan, for any other purpose, except as may be required by law.

## VI. **Verification**

a. Prior to making a disclosure, a covered entity must comply with the following requirements:

\_\_\_\_\_ Except with respect to disclosures under § 164.510, the covered entity verifies the identity of a person requesting, or seeking access to, protected health information if the identity or authority of such person is not known to the covered entity; *and*

\_\_\_\_\_ The covered entity obtains any documentation, statements, or representations, whether oral or written, that is (are) a condition of disclosure from the person requesting the protected health information.

*Note:* If disclosure is conditioned on such documentation, statements or representations from the person requesting the protected health information, a covered entity may reasonably rely on documentation, statements, or representations that, on their face, meet the applicable requirements.

- b. A covered entity may reasonably rely on *any* of the following to verify identity when the disclosure of protected health information is to a public official or someone acting on his/her behalf:

\_\_\_\_\_ If the request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status;

\_\_\_\_\_ If the request is in writing, the request is on the appropriate government letterhead; *or*

\_\_\_\_\_ If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority, or other documentation of agency establishing that the person is acting on behalf of the public official.

- c. A covered entity may reasonably rely on *any* of the following to verify authority when the disclosure of protected health information is to a public official or someone acting on his/her behalf:

\_\_\_\_\_ A written statement of the legal authority under which the information is requested, or, if a written statement would be impracticable, an oral statement of such legal authority;

\_\_\_\_\_ If a request is made pursuant to legal process, warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal, such a request is presumed to constitute legal authority.